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EXAMINER				
GITLIN, MATTHEW J				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/579,016

**Applicant(s)**

MILLER ET AL.

**Examiner**

Matthew J. Gitlin

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 5/11/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 5/11/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but all of the information referred to therein has not been considered.
2. No copy of DE\_2535980\_A has been received, therefore it has not been considered.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "bore holes which are arranged to extend obliquely downward when viewed from outside to inside" of **Claim 17** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. **Claim 1** recites the phrase "comprise near their front sides a transverse recess each for the contoured element positioned opposite from them in the cross bond."

8. This phrase is not completely understood. The contoured element contains several recesses, and it is not clear as to which recess this claim is trying to describe. Also, the terms "them" and "each" seem to describe a plurality of something, which is not carefully described in the claim. The examiner will assume this limitation to be the longitudinal recess connecting vertically adjacent contoured elements.

9. **Claims 2-5** recite the term "intermittent part." Intermittent is understood to mean a random, non uniform interval. Therefore, an "intermittent part" is not understood. This is understood to mean this "part" would not connect between every contoured element and corner-

forming element, but between random associated pieces. The examiner is assuming the applicant to have meant to written "intermediate part."

10. **Claims 3-5** recite the limitation "intermittent part." There is insufficient antecedent basis for this limitation in the claims when the claims depend from claim 1 as claim 1 does not recite a "intermittent part."

11. **Claim 17**; The phrase "obliquely downward" is not understood in context of the Drawings and Specification. The specification describes these holes to be arranged diagonal not obliquely downward. It is not understood how the bores would facilitate attachment to a rear wall surface being obliquely arranged downward.

12. **Claims 7, 13 and 14** recite the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See **MPEP § 2173.05(d)**.

13. **Claim 18** recites the limitation "the transition area." There is insufficient antecedent basis for this limitation in the claims.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. **Claims 1, 7-8, and 13-15 as best understood by the examiner**, is rejected under 35 U.S.C. 102(b) as being anticipated by Ellson (US 6,199,332).

16. **Claim 1;** Ellson discloses a log-cabin type façade (10) with at least one elongated contoured element (22), which are arranged over each other (Fig. 1), with corner-forming elements (20) that are assigned to the contoured elements (Fig. 2) and are arranged in the form of stumps (Fig. 2) reaching over each other in a cross bond (Fig. 1), whereby the contoured elements and the corner-forming elements jointly take on the appearance of a massive blockhouse-type building mode (12, Fig. 1), characterized in that the contoured elements are designed to be mirror-symmetrical in their longitudinal extension (**Mirror symmetry as seen in Fig. 1**) and comprise near their front sides a recess (**Lowest portion of elements 22, recess shown on underside for vertically adjacent stacking, in Fig. 2**); the corner-forming elements are designed in the form of round wood stumps (Fig. 2) with a cut surface (27) that forms an end surface and comprise, on the opposite side, a first planar attachment surface (**End of 36 in Fig. 2**) and, adjacent to this and adapted to an external side of the crossing contoured element and corner-forming element a second attachment surface (**32a or 32b**); and the contoured elements and the corner-forming elements provide a building kit (**Assembly of kit, Fig. 1**).
17. **Claim 7;** Ellson discloses the contoured element is designed as a semi-circular contour (Fig. 1) as seen in a cross-section that comprises a circular external side (**External side of Fig. 1**) imitating a tree trunk (**See wood grain on external side**) and an attachment surface (24) that is planar at least in part (Fig. 2) and comprises a recess (**Recess on underside of rear side used for attachment of a vertically adjacent contoured element**).
18. **Claim 8;** Ellson discloses on the contoured element a tongue (**Projection of uppermost part of 22 in Fig. 2**) on an upper section, and on the opposite bottom side, a complimentary

groove (**Recess on underside of rear side used for attachment of a vertically adjacent contoured element**).

19. ***Claim 13;*** Ellson discloses the corner-forming element consists of a round body (**Fig. 1**) that comprises on a bottom side (**Bottom half portion of Fig. 1**) thereof a concave surface (**32b, Fig. 2**) whose radius of curvature preferably corresponds to the radius of the corner-forming element (**Fig. 1**).

20. ***Claim 14;*** Ellson discloses a planar cut surface (**27**) is designed as the end surface of a trunk on a front side of the corner-forming element and in that the opposite front side, as seen in the lateral view, comprises in an upper half thereof a planar attachment surface (**End of 36 in Fig. 2 shown on upper half of corer piece**) that verges into a second attachment surface (**32b**) that is formed by a circle segment-shaped milled recess (**32b**) whose radius of curvature preferably corresponds to the radius of the corner-forming element (**As seen assembled in Fig. 1**).

21. ***Claim 15;*** Ellson discloses a recess (**32b**) between a first attachment surface (**End of 36 in Fig. 2 shown on upper half of corer piece**) and a second attachment surface (**27**) of the corner forming element.

22. ***Claims 2 and 16, as best understood by the examiner,*** is rejected under 35 U.S.C. 102(b) as being anticipated by Felser (US 4,592,182).

23. ***Claim 2;*** Felser discloses a log-cabin type façade (**Object of Fig. 1**) with at least one elongated contoured element (**10**), which are arranged over each other (**Fig. 1**), with corner-forming elements (**16**) that are assigned to the contoured elements (**Fig. 3**) and are arranged in

the form of stumps (**Fig. 3**) reaching over each other in a cross bond (**Fig. 3**), whereby the contoured elements and the corner-forming elements jointly take on the appearance of a massive blockhouse-type building mode (**Fig. 1**), characterized in that the contoured elements are designed to be mirror-symmetrical in their longitudinal extension (**Mirror symmetry as seen in Figs. 1-5**); an intermediate part (**22 or 24**) is provided that is positioned between a contoured element and a corner-forming element (**Best seen in Fig. 7, 24 is sandwiched between 10 and 16**), the corner-forming elements are designed in the form of round wood stumps (**Fig. 3**) with a cut surface (**Left end surface of 16 in Fig. 4**) that forms an end surface and comprise, on the opposite side, a first planar attachment surface (**Right end of 16 in Fig. 4, not shown**) and, adjacent to this and adapted to an external side of the crossing contoured element and corner-forming element a second attachment surface (**Right side surface of 16, shown in Fig. 4**); and the contoured elements, the intermediate parts and the corner-forming elements provide a building kit (**Assembly of kit, Fig. 1**).

24. **Claim 16:** Felser discloses the intermediate part is designed to be mirror-symmetrical (**As seen in Fig. 3, item 24**).

#### ***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



26. **Claims 3-6, 11, and 17, as best understood by the examiner**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Felser (US 4,592,182) in view of Baker (US 6,363,672).

27. **Claims 3-6, 11 and 17**; Felser does not expressly disclose the contoured elements, the corner-forming elements, and the intermittent parts are connected to each other by means of plug-in connection elements or at least two plug-in connection elements are provided at each site of connection between the contoured elements, the corner-forming elements, and the intermittent parts or at least two bore holes for receiving the plug-in connection elements are provided at each site of connection of the contoured element and the intermittent part or the corner-forming elements each comprise in a left and right section of the first attachment surface at least two bore holes for receiving the plug-in connection elements or bore holes are provided in the planar attachment surface of the contoured element or bore holes that are provided in the form of through bore holes for receiving plug-in connection elements in the intermediate part.

Baker discloses contour elements (**15, 15b, 15c, 15d**) connected to corner forming elements (**30a, 30b, 30c, 30d, 30e**) connected to each other via grooves (**28 and 38**) and a pin (**25**) for the purpose of connecting, stabilizing, and otherwise attaching horizontal contour elements to corner forming elements.

At the time of the invention it would have been obvious to a person having ordinary skill in the art to try and provide the façade system of Felser, barring any unpredicted results, with the contoured elements, the corner-forming elements, and the intermittent parts are connected to each other by means of plug-in connection element and at least two plug-in connection elements are provided at each site of connection between the contoured elements, the corner-forming

elements, and the intermittent parts and at least two bore holes for receiving the plug-in connection elements are provided at each site of connection of the contoured element and the intermittent part and the corner-forming elements each comprise in a left and right section of the first attachment surface at least two bore holes for receiving the plug-in connection elements and bore holes are provided in the planar attachment surface of the contoured element and bore holes that are provided in the form of through bore holes for receiving plug-in connection elements in the intermediate part, since it is shown to be known in the art to use these connections as taught by Baker, in order to connect, stabilize, and otherwise attach the contoured elements, corner-forming elements and intermediate parts to securely form a corner assembly.

28. **Claim 9, as best understood by the examiner**, is rejected under 35 U.S.C. 103(a) as being unpatentable over Felser (US 4,592,182) in view of Collister, Jr. (US 4,279,108).

Felser discloses an external side (**External side of Fig. 1**) and a groove (**Recess on underside of rear side used for attachment of a vertically adjacent contoured element**) of the contoured element, but does not expressly disclose a fin surface provided there between on the bottom side of the contoured element, whereby said fin surface and a contoured element that is assigned to and positioned adjacent to the fin surface form an overlapping area.

Collister, Jr. discloses contoured elements (**10 and 20**) stacked vertically adjacent comprising a tongue (**12**) and groove (**16**) connection, and a fin surface (**Lowest surface which contacts shoulders on either side of tongue 14 in Fig. 4**) between the external surface (**Left side front surface of Fig. 4**) and the groove (**16**), whereby the fin surface and adjacent

contoured element are positioned to form an overlapping area (**Area in groove where adjacent contoured elements overlap**) for the purpose of upon insertion into a rectilinear groove elongated expansion chambers will be defined to halt the propagation of drafts between the mating surfaces of adjacent log.

At the time of the invention it would have been obvious to a person having ordinary skill in the art to try and provide the façade system of Felser, with a fin surface provided there between on the bottom side of the contoured element, whereby said fin surface and a contoured element that is assigned to and positioned adjacent to the fin surface form an overlapping area, as taught by Collister, Jr., since it has been shown that it is known in the art to form a fin surface for contacting vertically adjacent contoured elements, in order to halt the propagation of drafts between the mating surfaces of adjacent log.

29. **Claim 18, as best understood by the examiner**, is rejected under 35 U.S.C. 103(a) as being unpatentable over Felser (US 4,592,182) in view of Hoffner (US 5,586,422).

Felser does not expressly disclose in that the contoured element comprises bore holes in the transition area between the external side and the tongue, which bore holes are arranged to extend diagonally downward when viewed from outside to inside.

Hoffner discloses bore holes (211) displaced in a contoured element (21) arranged in a transition area (23) between an exterior surface (22) and an upper attachment feature (25) for the purpose of securing the contoured member to a sidewall with the use of fasteners (54).

At the time of the invention it would have been obvious to a person having ordinary skill in the art to try and provide the contoured elements of Felser, barring any unpredicted results,

with bore holes in the transition are between the external side and the tongue, since Hoffner has taught that it is known in the art to do so in order to secure the contoured members to a wall portion.

Felser, as modified above, does not expressly disclose said bore holes arranged to extend diagonally downward when viewed from outside to inside. At the time of the invention it would have been obvious to a person having ordinary skill in the art to try and modify the angle of the bore holes of Felser, as modified above, to extend diagonally downward, in order to securely attach the contoured elements to a wall surface at an angle which corresponds to a certain application, since it is known in the art to modify the angle of a fastener to more securely anchor or engage the member being secured to a wall structure.

30. **Claim 19, as best understood by the examiner,** is rejected under 35 U.S.C. 103(a) as being unpatentable over Felser (US 4,592,182) or Ellson (US 6,199,332).

Neither Felser nor Ellson disclose the contoured elements, the corner-forming elements, and the intermittent parts are designed to be made from the wood of larch trees or Douglas firs for external areas and from the wood of pine trees, oak trees, northern firs, cedars, hemlock firs or as imitation wood for internal areas.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to try and manufacture the contoured elements, the corner-forming elements, and the intermittent parts are designed to be made from the wood of larch trees or Douglas firs for external areas and from the wood of pine trees, oak trees, northern firs, cedars, hemlock firs or as imitation wood for internal areas, since it has been held to be within the general skill of a

worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

***In re Leshin, 125 USPQ 416.***

***Allowable Subject Matter***

31. **Claims 10 and 12** would appear be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

32. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or adequately suggest the combination of limitations of Claims 1 or 2, and the limitations of a circular segment-shaped milled recess that extends from a lower edge to the longitudinal middle plane and serves as second attachment surface and verges into a first planar attachment surface that extends to the upper end of the contoured element or in that the contoured element comprises in the second attachment surface near the first attachment surface a recess that extends transverse with respect to the longitudinal extension of the contoured element, whereby said transverse recess comprises a contour for receiving at least the tongue of a further contoured element that is arranged in the cross bond.

***Conclusion***

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Gitlin whose telephone number is (571)270-5525. The examiner can normally be reached on Monday - Friday (7:30am-5:00pm EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. G./  
Examiner, Art Unit 3635

/Robert J Canfield/  
Supervisory Patent Examiner, Art Unit 3635